DRN-4680847

The complaint

Mr and Mrs O complain about the administration of their joint reviewable whole of life policy by Aviva Life & Pensions UK Limited. They feel Aviva has failed to provide sufficient information about two errors it made, firstly concerning the refund of units in the policy based on incorrect charges and secondly, how it set out the charges on their annual statements after 2019. They believe Aviva ought to give a clear explanation for how it has operated the policy, along with compensation for its mistakes and the upset they've been caused.

What happened

Mr and Mrs O began their Norwich Union unit-linked whole of life policy in 1989, on a maximum cover basis with an initial £60,000 sum assured and a £29.30 monthly premium. The policy is reviewable, and reviews have taken place in 2009, 2014 and 2019 – though on each occasion the policy premium has remained unchanged. The next policy review is due on 28 October 2024.

In October 2022, Aviva notified Mr and Mrs O that it had identified an error with their policy, which had been ongoing from January 2014 to October 2020. It said some of the charges taken from the policy were too high, and this meant more units were sold to fund the cost of life cover than was necessary. It had now rectified the error by placing 459 units totalling £1914.82 back into the policy.

Mr and Mrs O complained. They said that when they took their policy out, they had never been told that the investment fund would be used to pay the death benefit within the policy. They also queried what charges Aviva actually took from the policy.

On 11 November 2022, Aviva sent Mr O a letter explaining how his and Mrs O's policy worked. It sent a further letter on 15 November 2022 confirming it had not given advice about the policy to Mr and Mrs O; they took it out with Norwich Union (for which Aviva was now responsible) on an execution only basis - meaning they received no advice at the time.

Aviva responded to the complaint on 23 November 2022. It said that since its records were clear that Aviva had not given any advice to Mr and Mrs O in 1989, it did not believe it had a case to answer about the sale of the policy.

Mr and Mrs O remained unhappy with Aviva's explanation and brought their complaint with this service in December 2022.

In their complaint form, Mr and Mrs O raised additional matters beyond their concerns about what they were told in 1989. These were then treated as a second complaint. The issues they had regarding the sale of the policy were addressed separately, and do not form part of this complaint.

In relation to this complaint, Mr and Mrs O said though Aviva had corrected the error with the units, it failed to provide them sufficient information when doing so. If it had notified them beforehand, they could have considered having a refund of the money directly – rather than Aviva adding additional units back into the policy.

They also said that an additional charge of £1,160.64 showed on their 2019 statement for the cost of the life cover within the policy – which they were unaware of. Mr and Mrs O said they were concerned about the impact of it, as it could deplete the policy's investment fund.

These two new complaint issues were put to Aviva.

On 17 February 2023, Aviva partially upheld the complaint. It explained in far greater detail than the first complaint response how Mr and Mrs O's policy worked. It also apologised to them that it hadn't previously identified their concerns with its actions in October 2022 or given them enough detail to understand what had happened – this was because its system error had affected a number of customers, including Mr and Mrs O, and so the letter it sent wasn't tailored specifically to provide the explanation they required.

Aviva said it recognised the stress and inconvenience Mr and Mrs O had been caused and it offered them £250 in compensation, which would not be affected by their having pursued a complaint to the Financial Ombudsman Service.

One of our investigators reviewed this second complaint and agreed with Aviva's outcome of paying Mr and Mrs O £250 for the upset they had suffered. He otherwise felt it did not need to do anything more.

In respect of the issue about the charges, he said he was satisfied that the value added back into the policy to account for the units that were overpaid had been correctly calculated and Aviva was fair in how it had applied it. He also noted that a refund couldn't be given, because Mr and Mrs O hadn't paid incorrect premiums – rather, policy units were cancelled and readded to the policy.

Our investigator also explained that the charge Mr and Mrs O had highlighted wasn't a change to their policy or a new charge. Instead, regulatory requirements meant that Aviva had to set out the annual cost of providing cover more explicitly than it had previously.

Aviva said it agreed with our investigator's view. It also asked whether it could go ahead and pay Mr and Mrs O the agreed £250 compensation.

Mr and Mrs O didn't agree, which they said was for the following reasons:

- at no point when they first lodged the matter with this service did anyone indicate that they did not have a meritorious case – and two investigators had in fact suggested they did;
- yet when the investigator reviewed it, he merely reached the same view that Aviva had and repeated its reasoning;
- this therefore leads them to question the difference in approach from case handlers at this service; and
- it also remains strange to them that it hadn't previously been made clear on the policy documentation how much the life cover costs – and it has since increased to £1747.06 per annum.

Our investigator reviewed Mr and Mrs O's further comments as well as their ongoing communications at this service. He noted that the first investigator to speak with Mr and Mrs O about their complaint identified that their two main concerns hadn't been answered – and instead Aviva had focused on whether the policy was mis-sold.

She therefore set up a fresh complaint for the two additional complaint points – after which

Aviva would provide a reply. That the investigator agreed to do so did not mean she had made any findings on whether Mr and Mrs O's complaint should succeed or not.

The second investigator had sent Mr and Mrs O one summary email of his understanding of their complaint by way of an introduction. He also hadn't expressed any view about them having merits to their complaint.

Mr and Mrs O said they still wanted their complaint to be passed to an ombudsman. They made some further comments, noting:

- when Aviva undertook the 2019 review, it ambiguously did not refer to sections 4 and 6 of the policy terms (which concern amending the premium or sum assured);
- they therefore are of the view that Aviva hasn't acted in good faith;
- consequently, they feel the £250 isn't reasonable;
- they also hold concerns that Aviva might have made other unknown errors or simply chosen a premium capriciously; and
- it clearly knows the premiums aren't sufficient for the policy – and Aviva could at the very least have told them in plain language of this situation.

Aviva didn't have any other comments to make.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'd like to thank the parties for their patience whilst this matter has awaited referral to an ombudsman. Having looked at everything before me, I also believe this complaint should be upheld in part, for principally the same reasons put forward by our investigator. I'm going to uphold the complaint on the basis that Aviva made an error and has since offered compensation to put things right – which I believe it ought to pay now. I don't otherwise believe Aviva should do anything further to resolve this matter.

For completeness, I should reiterate that the complaint about the sale of the policy was the first, distinct complaint brought to this service. My decision concerns only the second complaint. I have therefore looked at the two complaint points in turn.

Aviva's error regarding mortality charges from January 2014 to October 2020

I recognise that discovering Aviva's system error has been upsetting for Mr and Mrs O, but I am satisfied that Aviva has taken the appropriate steps to rectify the mistake and that in its subsequent letters to them, it has taken the time to explain how their whole of life policy operates, and why the mistake happened.

To reiterate, Mr and Mrs O's policy was taken out on a maximum cover basis (three options of minimum cover, balanced cover and maximum cover were given). I can see that Aviva has explained these three levels of cover, and they are also set out in the policy brochure issued at the time of the advice. With maximum cover, the primary intent of the policy is for life cover, with the maximum possible number of investment units being used to cover the cost of life cover, rather than for investment.

The policy premium is used to purchase units equally across two Aviva investment funds. Thereafter, the 'sum at risk' is established by Aviva calculating the difference between the policy's fund value and the sum assured and multiplying this by an age-related factor using

mortality charges. These go up over time because the likelihood of a claim increases as a policyholder ages. Units are then 'cancelled' monthly to fund the cost of providing the cover.

Aviva's error took place because its systems overestimated the number of units that needed to be cancelled monthly, over the period January 2014 to October 2020. It did this because Aviva had not reviewed the mortality costs when it should have. It has shown us actuarial calculations for the incorrect and correct monthly mortality rates which ought to have applied. The reason for this is that life expectancy had increased over this period and therefore the charges should have been cheaper than the ones being applied.

Aviva could not simply refund the charges to Mr and Mrs O, because they were not overcharged directly within the policy premium. What happened is the calculation of costs for the units purchased with their ongoing premium was too high – and if this had been correct, less units would have been sold. Aviva therefore rightly assessed what it should have done with the 81 monthly charges that were too high, by retrospectively applying the lower charges and establishing the correct number of units (459) which shouldn't have been sold. It then returned these to the policy based on the months they were taken, to account for the growth they should have made to 30 October 2022. This ensured that no financial loss occurred in the policy's investment fund and the correct position was restored.

I hope Mr and Mrs O recognise that I cannot ask Aviva to do anything else here, because it has used the correct approach to putting them back in the position they should have been in with their policy, had the error with the mortality charges not happened in the first place.

What this service does is consider if a business has treated its customers unfairly because of actions or inactions. And if it has done so, we then go on to consider what ought to be done to put the mistake(s) right. In this case, that was to restore the policy to the correct position had the right mortality charges been applied and the correct number of units sold.

As well as putting right any financial losses in a complaint (though there are none in this circumstance), we also consider the emotional or practical impact of any errors on a complainant. In doing so, we do not fine or punish businesses; as I explained earlier in this decision, the FCA undertakes the role of regulator.

It may be helpful for Mr and Mrs O to review to the guidance available on our website around the amounts and types of awards made in instances of upset, trouble, inconvenience and distress caused by businesses in the complaints we see at this service.

Considering the impact of the error, I believe the proposed payment of £250 was reasonable in circumstances where Mr and Mrs O discovered that Aviva had applied incorrect charges for a number of years, which caused them notable upset and frustration. It is an amount I believe appropriate for the impact of an unknown error of this nature.

The cost of cover charge shown on the policy statement

When Mr and Mrs O took out their policy, Norwich Union explained to them how the maximum cover meant that "*if your prime aim is insurance protection, you can decide to convert most of your investment units into life cover and so reach the maximum level. If you are likely to want the maximum cover for more than ten years, you might need to inject larger contributions at the end of the first decade*".

For this reason, Mr and Mrs O referred to sections 4 and 6 of their policy terms, where they feel Aviva ought to have informed them of their right to increase their premiums as required. However, those sections relate to the option to amend the policy's sum assured or premiums in the event that the premiums payable for the period up to the next review date (when taken

with the value of the units) are insufficient to meet the cost of providing the policy. Aviva has not done this because as yet, the policy has not failed any review.

Since 2019, on the annual statements for the policy, Aviva has now expressly set out the annual "*cost of providing your benefits*" to Mr and Mrs O. This is not a new charge – it is a new way of setting it out, as regulatory changes required it to do so. These costs will increase with age. Furthermore, the maximum cover basis of the policy (meaning less of the units are allocated for investment) will mean that the policy's investment fund value is lower than it would have been had the policy been set up on a balanced or minimum cover basis.

I don't find Aviva to have acted unfairly in relation to the amendment to the annual statements from 2019. Its purpose was to give Mr and Mrs O as much clarity about their policy as possible, and this is a reasonable intention. Though they did not receive advice at the time of the sale, Mr and Mrs O could consider seeking financial advice now regarding the policy, if appropriate.

Putting things right

I believe that Aviva has taken reasonable steps to resolve the complaint, by allowing Mr and Mrs O to have options in respect of the amended policy premium as well as agreeing to pay them £250 for the upset they have been caused by the impact of its mistake. I think this offer is fair in all the circumstances. So my decision is that Aviva should pay £250 to Mr and Mrs O, as I understand it has not yet made that payment to them.

My final decision

For the reasons explained, I uphold this complaint in part. I do not find Aviva to have acted unfairly in rectifying the system error it uncovered, or in how it issues annual statements to Mr and Mrs O. But I agree that the impact of discovering the error had occurred was upsetting for Mr and Mrs O and Aviva's offer to pay them £250 as compensation for that impact was appropriate in the circumstances.

I direct Aviva Life & Pensions UK Limited to pay Mr and Mrs O £250. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 10 April 2024.

Jo Storey
Ombudsman